Commonwealth
CANCER CENTER
of Danville

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Office of Health Policy
c/o Diona Mullins, Policy Advisor
Cabinet for Health and Family Services
275 East Main Street, 4W-E
Frankfort, Kentucky 40621

Re: Certificate of Need Modernization: Core Principles

Dear Ms. Mullins:

Thank you for the opportunity to comment on this important initiative. I am President of Commonwealth Hematology-Oncology P.S.C. d/b/a Commonwealth Cancer Center of London. The private practice to which I belong operates a freestanding, outpatient radiation therapy facility in London, Kentucky (Laurel County) and has been servicing patients in London/Corbin and surrounding communities, since 2007. We provide our services without a certificate of need pursuant to the exemption found in KRS 216B.020(2)(a); however, we applied for a certificate of need (CON) on November 30, 2009 – five years ago! – and we have been forced to defer it ever since because of what we believe is an antiquated CON process. Our comments are as follows.

1. ***Supporting the Evolution of Care Delivery.*** This core principle states that the trend is "decisively away from a high-overhead acute/inpatient model to an outpatient-centric model." Our staff has reviewed the "Health Care Facility Capacity Report" prepared a year ago for the Cabinet by Deloitte Consulting ("Report"). According to the Report, megavoltage radiation therapy is designated as a "Tier 2" Facility, in which shifts in care are "not expected to be affected … from inpatient to outpatient to the same extent as" other facilities. We do not agree with this statement, but understand how the Report reached the flawed conclusion that led to it. Of the 56 facilities that are licensed (i.e., obtained a CON), and listed in the Cabinet's annual utilization report and inventory, less than 25% are designated "freestanding," and most if not all of those are owned by hospitals. However, most radiation therapy today is provided on an outpatient basis, even if the provider is an acute care hospital. In addition, practices like ours, providing services as part of our independent medical practices are not accounted for in the inventory and are not required to report our utilization, yet we served approximately two hundred seventy new patients in the past year and an approximate total of six thousand four hundred radiation procedures to patients.[1]

We believe that it would be a fairer process, and give a much more accurate picture, if the decision maker in CON matters had information on services actually provided in a

[1] In fact, the State Health Plan specifically *prohibits* the inclusion of utilization of services like ours in the state's inventory of services *and* the use of that utilization in determining consistency of the State Health Plan. 2013-2015 Kentucky State Health Plan, Technical Note 5 at iv.

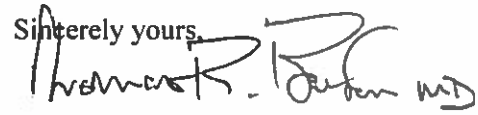
particular service area. Information about our practice, who we serve, how many, for how many years and the number of procedures we perform should be relevant to whether we should be awarded a CON. As it stands now, we are barred from consideration because an existing hospital-based radiation therapy program *in another Area Development District* consistently performs fewer than the required threshold number of procedures for another application to proceed.

2. *Incentivizing Development of a Full Continuum of Care.* Today, many patients receive both radiation therapy and chemotherapy, or medical oncology services, in the course of their treatment. Our practice also provides medical oncology services and partners with other radiation therapy providers in Central Kentucky (Boyle and Franklin Counties). That would lead to the optimal patient experience in Laurel County through a full continuum of care, but we are prevented from doing so at the current time because (1) we cannot have joint ownership with a nonphysician entity and retain the physician exemption and (2) we cannot get a CON application approved (which would allow the exploration of different ownership structures) because of restrictive rules in the State Health Plan.

3. *Incentivizing Quality.* We firmly believe that our services now are of the highest quality. Nevertheless, that quality would be monitored and affirmed by gaining facility licensure through our voluntary submission to that process as part of obtaining a CON. For the reasons outlined above, we are currently unable to do that, which does not serve the patients of the Cumberland Valley ADD, one of only two ADDs without a radiation therapy program.

We ask that you accept these comments on one aspect of the current CON program. We are not asking that practices such as ours be both exempt from the CON process and allowed to obtain facility licensure. However, we believe it is reasonable to consider that a practice such as ours, which has been providing radiation therapy services in an Area Development District without a single licensed program for seven years now, and which is more than willing to subject itself to state oversight through licensure, might be given a path to CON approval that would be more expeditious than full, substantive review using the existing State Health Plan. We are confident that we can meet any quality, access and cost parameters that the Cabinet may decide to adopt.

Sincerely yours,



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